

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LONNIE LITTLE and ELLEN LITTLE,

Civil No. 05-2387 (PJS/RLE)

Plaintiffs,

v.

MICHAEL IAN STRIKER, ZAK PAUL
MANUSZAK, JAMES M. BOO, ROBERT
MICHAEL KEELIN,

ORDER ADOPTING REPORT AND
RECOMMENDATION DATED
AUGUST 24, 2006

Defendants.

Karl A. Oliver, THE OLIVER GROUP, PLC, 1935 West County Road B2, Suite 415, Roseville, MN 55113, for plaintiffs.

This matter is before the Court on plaintiffs' objection to the Report and Recommendation of Chief Magistrate Judge Raymond L. Erickson. The Court has reviewed the record de novo, as 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b) require.

Plaintiffs object that Judge Erickson overlooked the "Affidavit of Not Found" that they submitted on March 6, 2006. *See* Docket No. 10. He did not. Judge Erickson specifically addressed this affidavit in his order dated April 19, 2006. *See* Docket No. 12 at 5-6. Judge Erickson found this affidavit inadequate, undoubtedly because Minn. R. Civ. P. 4.04(a) requires "an affidavit of the plaintiff or the plaintiff's attorney [to] have been filed with the court." The "Affidavit of Not Found" was signed by Jeffrey E. Dilger of Metro Legal Services. Mr. Dilger is neither "the plaintiff" nor "the plaintiff's attorney."

Judge Erickson has twice now instructed plaintiffs' attorney how to effect service by publication. Plaintiffs' attorney has refused to take instruction from Judge Erickson or to read Minn. R. Civ. P. 4.04(a) carefully. He is fortunate that Judge Erickson did not recommend that this matter be dismissed *with* prejudice as to Manuszak — a recommendation that would have been readily adopted by this Court.

Accordingly, based on the foregoing and on all of the files, records, and proceedings herein, the Court ADOPTS the Report and Recommendation of the Magistrate Judge [Docket No. 17]. IT IS HEREBY ORDERED THAT plaintiffs' claims against defendant Zak Paul Manuszak are DISMISSED WITHOUT PREJUDICE for failure to comply with the Court's previous orders and for failure to prosecute.

Dated: September 29, 2006

s/Patrick J. Schiltz

Patrick J. Schiltz
United States District Judge